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HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

(DIVISION BENCH)

CORAM : Hon'ble Shri S.R. Nayak, CJ
Hon'ble Shri D.R. Deshmukh, J.

Writ Petition No. 1481 OF 1999

PETITIONER

Adhir Chand Das,
S/o Ramesh Chandra Das,
Aged about 33 years, Ex-Master
Mechanic, Posted as Driver and
Posted Chief Medical Officer,
Jagdalpur, Division - Bastar.

Versus

RESPONDENTS

1. State of Madhya Pradesh,
Through The Secretary,
Public Health Services,
Vallabh Bhawan, Bhopal
2. Divisional Joint Director, Public Health
Services, Division Bastar, Jagdalpur,
M.P.
3. Chief Medical and Health Officer,
Bastar, District, Jagdalpur, M.P.
4. M.P. State Administrative Tribunal,
through the Registrar, Principal Bench -
Jabalpur, M.P.

Present:

Shri Prafull Bharat, learned counsel for the petitioner.

Shri Utkarsh Verma, learned Dy. G.A. for the State.

ORAL ORDER

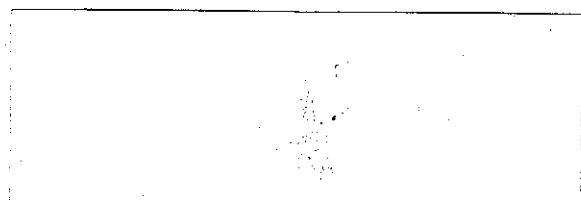
(Passed on 9th of January 2006)

The following Order of the Court was passed by
S.R. Nayak, CJ:

The petitioner herein made entry to the service as a Driver in the mobile unit of Jagdalpur. While serving as such, by an order dated 21-02-1986, he was promoted to the post of Master Mechanic in the pay-scale of Rs. 975 - 1650/- till further orders. In pursuance of the above promotion

order, the petitioner assumed the office of Master Mechanic w.e.f. 21-02-1986. When the matter stood thus, the department realising that the petitioner was wrongly promoted to a non-existing post, by its order dated 27-01-1988 cancelled the promotion order. The petitioner being aggrieved by the said order dated 27-01-1988 of the department instituted a Civil Suit bearing No. 46-A/1988 in the Court of Second Civil Judge Class II, Jagdalpur on 13-04-1988 for declaring that the petitioner was entitled to pay-scale of Rs. 975-25-1000-30-1210-40-1450-50-1650 and interest @ 6% from the date when the pay was due till payment. On constitution of M.P. State Administrative Tribunal, the above suit was transferred to the Tribunal and the said case was renumbered as T.A. No. 6320/88.

(2) The suit/T.A. was opposed by the department by filing written statement / reply. In the written statement / reply filed by the department, it was specifically contended that the Divisional Level Selection Committee wrongly promoted the petitioner to the post of Master Mechanic on 21-02-1986 against a non-existing post and that post of Master Mechanic to which the petitioner was posted was non-existent as on the date of promotion and that post was transferred to Raipur Division as far as back on 22-08-1984. At this stage itself, it needs to be noticed that the petitioner did not file rejoinder to the above reply contesting the correctness of the statement made on oath. In the premise, the Tribunal having opined that the promotion of the petitioner to the post of Master Mechanic vide order dated 21-02-1986 was a nullity in the eye of law, dismissed the application filed by the petitioner. Hence, the aggrieved applicant has filed this writ petition under Articles 226 / 227 of the Constitution of India.



(3) We have heard learned counsel for the parties. It was contended by the learned counsel for the petitioner that well before he was promoted to the post of Master Mechanic vide order dated 21-02-1986, the Directorate of Health Services vide Annexure P/8, produced at page No. 22 of the material papers, changed the nomenclature of the post of Master Mechanic as Head Mechanic and therefore, promotion of the petitioner effected on 21-02-1986 should be regarded as promotion to the post of Head Mechanic and the department ought not to have cancelled the promotion order by the impugned order dated 27-01-1988.

(4) Learned Govt. Advocate, per contra, would support the impugned order.

(5) We have carefully perused the impugned order as well as the pleadings of the parties filed in the case. It is nowhere contended that when the petitioner was promoted to the post of Master Mechanic w.e.f. 22-02-1986, there existed more than one post of Master Mechanic in the mobile unit of Jagdalpur. On the otherhand, pleadings of the parties and the material placed before the Court would clearly go to show that the petitioner was promoted to a post which was already transferred to the Raipur Division by order dated 22-08-1984. This plea was specifically taken by the department in the written statement / reply filed in the Suit /T.A. and the petitioner did not contest the correctness of the above assertion made by the department by filing rejoinder. There is absolutely nothing on record to support the plea now urged by learned counsel for the petitioner. Resultant position is that when the petitioner was promoted to the post of Master Mechanic vide order dated 21-02-1986, there existed no post of Master Mechanic in the mobile unit of Jagdalpur and in that view of the matter, the Tribunal is justified in opining that the very

promotion of the petitioner to the post of Master Mechanic was a nullity in the eye of law.

(6) We, however, before parting with this case, wish to place on record the submission made by the learned counsel for the petitioner. It was submitted that the petitioner was not paid salary in the pay-scale of Rs. 975-25-1000-30-1210-40-1450-50-1650 even during the interregnum period between 21-02-1986 and 27-01-1988. We have perused para 6 of the plaint filed before the Civil Court. The petitioner has specifically averred that he was not paid even the pay and admissible allowances in the pay-scale of Rs. 975-25-1000-30-1210-40-1450-50-1650. The above averment in para 6 of the plaint, however, is denied by the department in para 6 of the written statement / reply by one word, 'denied', but, the department has not asserted that it has paid salary to the petitioner in terms of pay-scale of Rs. 975-25-1000-30-1210-40-1450-50-1650. In that view of the matter, we direct the petitioner to make an appropriate representation before the concerned authority of the department and if such representation is made within three weeks from today, the department shall consider the same and if no salary is paid in the pay-scale of Rs. Rs. 975-25-1000-30-1210-40-1450-50-1650 to the petitioner for the period commencing from 22.02.1986 to 27.01.1988, then, to pay the balance or difference salary to the petitioner. The writ petition is disposed of in the above terms. No costs.

Sd/-
Chief Justice

Sd/-
Dilip Raosaheb Deshmukh
Judge

Suby